

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1338 OF 2005

Vinayak Babasaheb Shinde & Ors. .. Appellants
Versus
Raoso Bhimrao Gaikwad & Ors. .. Respondents

Mr.Umesh Mankapure for appellants
Mr.A.M.Kulkarni for respondents.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 23rd August 2007.

P.C.

. This second appeal was argued extensively but in the light of further affidavits which are filed, a request was made that parties are negotiating settlement and, therefore, the judgement must not be delivered. It is in such circumstances, that despite hearing being concluded, several adjournments have been granted. However, it is now reported that the

settlement is not possible. Hence, this Judgement. At the outset, it is disturbing that despite filing affidavits and making statements on oath that settlement proposals are acceptable, parties back out even before the highest court in the State. The anxiety of the Court to put an end to all disputes and curb litigation is thus misinterpreted and misused to buy time. The appellants readily agreed to settlement and the backed out. This trend is increasing. It is unfortunate that such things happen frequently.

2. This is a second appeal where the challenge is to the judgement and decree dated 31st August 2005 of the Additional Dist.Judge Sangli in Regular Civil Appeal No.16 of 2003 arising out of judgement, order and decree dated 30th November 2002 of the Civil Judge Senior Division, Atpadi in Regular Civil Suit No.20 of 1994. The lower appellate Court reversed the judgement and decree of the trial court and

directed thus:-

". The Appeal is allowed with costs, throughout.

. The judgement and decree, passed by the lower court, is hereby set aside. Instead, the suit filed by the appellants - plaintiffs is hereby decreed.

. The respondents - defendants are, hereby, directed to deliver the possession of the suit properties, within a period of four months from today.

. The enquiry into mesne profit under Order XX Rule 12 of the Civil Procedure Code be held separately.

. The decree in the suit be prepared accordingly."

This suit was instituted by the original plaintiffs who are respondents.

3. Aggrieved by the decree of the lower appellate court this second appeal is filed by the heirs and legal representatives of one Dhondubai. They are the original - defendants.

4. The submission of Mr.Mankapure appearing for appellants is that the lower appellate court was fully aware that even after the sale deed dated 2nd May 1977 on the basis of which certain rights are claimed by respondents, the appellants, continued to be in possession of the suit lands. He invites my attention to the judgement and order in Regular Civil Appeal No.90 of 1984 and 424 of 1984 between same parties. He submits that the appellate court in that judgement has held that although, the sale deed

is legal and valid, present appellants have continued to be in possession of the suit lands and, therefore, the respondents plaintiffs would have to institute appropriate proceedings. The findings of the lower appellate court in that judgement and decree should also be perused and then, it would be apparent that the trial court was right in dismissing the suit. The possession of present appellants was hostile and adverse and, therefore, the claim for adverse possession has rightly been accepted by the trial court. In such circumstances, whatever rights were conferred on the respondents under the sale deed stood extinguished and no reliance could be placed on the same to assert title in the property. He submits that the plea of adverse possession which was raised has been negatived without considering the relevant provisions of law. He submits that the suit was for recovery of possession on the basis of title to the property but it was clearly barred by law of

limitation. He submits that Article 64 of the Limitation Act would be attracted and not Article 65 and that is why the judgement and decree of the lower appellate court is clearly vitiated. He, therefore, submits that the substantial questions of law would be as formulated in Ground Nos.V, VI and VII would arise for determination.

5. In support of his submissions, Mr.Mankapure relied upon the decision reported in 1995 (1) S.C.C. 311 (Shyam Sunder Prasad Vs. Raj Pal Singh).

6. On the other hand Mr.Kulkarni appearing for respondent Nos. 1 and 3 submits that the lower appellate court has rightly decreed the suit. He submits that it is inconceivable that after succeeding in proving the sale deed and the same being held to be legal and valid but only finding that the appellants were in possession for some time so also taking in to account the

provisions of section 119 of the Transfer of Property Act, the lower appellate court in earlier proceedings observed that the remedy of the present respondents is to file substantive suit seeking possession on the basis of their title and straightway in the proceedings which were instituted by the appellants an order directing that the present respondents be put in possession cannot be passed. Thus, only limited relief was granted to the appellants. On the basis of the judgement and decree in Regular Civil Appeal No.90 of 1984 which arose from the judgement and decree dated 30th January 1984 in Regular Civil Suit No.50 of 1977 which was instituted by Dhondubai, predecessor in title of the appellants, it cannot be said that the claim for adverse possession is well founded and justified. Consequently, there is no merit in the second appeal. On facts, the possession is not adverse to the owner. In such circumstances, the decree be maintained as what is attempted is

re-appreciation of evidence which is impermissible.

7. Respondent No.2 who is represented by Mr.Kharge supports the impugned judgement but on slightly different grounds. He submits that the decree of the lower appellate court does not require any interference. Consequently, the second appeal be dismissed.

8. For properly appreciating the rival contentions, it is necessary to notice the earlier litigation. The predecessor in title of the present appellants, Dhondubai, filed Regular Civil Suit No.50 of 1977 in the Court of Civil Judge Junior Division, Vita, claiming declaration that the sale deed dated 2nd May 1977, a copy of which is at page 201 of the paperbook, is null and void and not binding upon her. This sale deed is with regard to S.No.255/4 admeasuring One hectare and one R., situate at Village Shetphal

Taluka Atpadi Dist.Sangli. The case set up in the plaint was that the sale deed was got executed by practicing fraud on her and on mis-representation. Similarly, the sale deed is void as prior permission for sale under the Prevention of Fragmentation and Consolidation of Holdings Act was not obtained. The sale deed was also void because the land was mortgaged and debt was outstanding against the deceased plaintiff Dhondubai and, therefore, it was hit by sections 47 and 48 of the Maharashtra Cooperative Societies Act. That suit was dismissed on 3rd January 1984.

9. Aggrieved by the judgement and decree of the trial court dismissing the suit, Dhondubai preferred an appeal being Regular Civil Appeal No.90 of 1984. She died during the pendency of this appeal and her heirs and legal representatives viz., present appellants prosecuted the appeal. That appeal was partly

allowed. The points which are framed for determination and answered accordingly are thus:-

	Points	Findings
1.	Whether the sale deed dated 2/5/1977 is void on the ground that it was obtained from deceased plaintiff - Dhondubai by playing fraud and due to misrepresentation	No.
2.	Whether the sale deed in question is void for the reason that prior permission for sale was necessary under provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act?	No.
3.	Whether the sale deed is void for the reason that the suit land was mortgaged with the Coop.society and debt was outstanding against deceased plaintiff - Dhondubai and, therefore, it is hit by Sections 47 and 48 of the Maharashtra Cooperative Societies Act, 1965?	No.
4.	Whether deceased plaintiff Dhondubai was entitled to claim relief of declaration in respect of nullity and voidness of the sale-deed	

in question? No.

5. Whether her possession is clothed with lawful character and is required to be protected under decree for perpetual injunction. Yes.

10. Thus, as far as legality and validity of the sale deed is concerned, all findings of the trial court were confirmed but insofar as possession of Dhondubai was concerned, the lower appellate court observed thus:-

"30. It is the trite law that while the right to recover possession is a genus, the other right to retain the same is a specie. In this case, deceased plaintiff Dhondubai had a right to recover the possession of the suit land, if she could have proved breach of the exchange agreement and restoration of the rights. The corollary is that she had full right to retain possession of the

suit land when it was not parted with, in lieu of the exchange properties. Under these circumstances, her possession is not of a trespasser but is clothed with lawful character. The defendants cannot be permitted to dispossess her by taking law in their own hands. Hence, I have no hesitation in holding that decree for perpetual injunction is warranted in the circumstances of the present case.

31. To sum up, I hold that the suit for declaration that the sale deed (Exh.91) is null and void, is rightly dismissed by the learned Trial Judge. However, the possession of deceased plaintiff - Dhondubai ought to have been protected under decree for perpetual injunction. Consequently, the appeal No.I (Reg.C.A.No.90/84) will have to be partly allowed in view of these findings,

whereas the appeal No.II (R.C.A. No.424/84) will have to be dismissed. Thus, the order:-

. The appeal No.I (Regular Civil Appeal No.90 of 1984) is partly allowed.

. The defendants are perpetually restrained from disturbing possession of the plaintiffs in respect of the suit land without adopting due process of law."

11. It is in these peculiar facts that the lower appellate court in that appeal held that Dhondubai had a right to recover possession of suit land, if she could have proved breach of exchange agreement and sought restoration of her rights. It is in that context it was held that she has right to retain possession of the suit land when it was not parted with in lieu of

exchange properties. Her possession is not of a trespasser but is clothed with lawful character. She cannot be permitted to be dispossessed and that too when she has instituted the proceedings. Therefore, granting liberty to the present respondents to institute appropriate proceedings in that behalf, Regular Civil Appeal No.90 of 1984 was partly allowed.

12. Now, the present litigation. After the decree in Regular Civil Appeal No.90 of 1984 dated 27th June 1991 was passed, the suit from which the present judgement arises came to be instituted. Regular Civil Suit No.20 of 1996 was instituted by the present respondents against the appellants. The suit property is Survey No.255/4 which admeasures one Hectare and one R. and form part of the sale deed so also S.No.255/3 which is 16 Rs. Both lands are covered by the sale deed dated 2nd May 1977 and were the subject matter of earlier proceedings. After narrating the facts

pertaining to the sale deed and the decree in the suit filed by deceased Dhondubai, it was alleged by the respondents in the plaint that neither the deceased nor her heirs have any right title or interest in the suit lands and the present respondents can, therefore, seek a decree for possession on the basis of their title. It was pointed out by Mr.Mankapure that in the plaint there is a reference to the deed of exchange which was executed by respondent No.1 and the land at Palshi, is more particularly described in the deed of exchange, a copy of which is also annexed to the present paperbook. It is submitted that in para 5 of the plaint, there is a clear reference to this transaction and in para 6 it is contended that the cause of action arose on account of judgement and decree dated 27th June 1991 in the Regular Civil Appeal referred to above and, therefore, the suit claim is not barred by limitation. The prayers in the suit are that the decree for possession be passed in

favour of the present respondents and against the present appellants - defendants.

13. After the oral and documentary evidence was led, the trial court dismissed the suit by holding that the present respondents cannot seek possession as the possession of Dhondubai is adverse to the legal title of the respondents plaintiffs. In paras 36 to 38 of the trial court's judgement a reference is made to the earlier proceedings and it is held that the possession of the defendants became adverse on the date of the decision of the appellate court. The limitation starts from the date of the decision of the lower appellate court. Therefore, when it framed the issues it held thus:-

(a) Do plaintiffs prove their ownership over the suit property - In the affirmative;

(b) Whether the defendants are owners of the suit property by adverse possession - In the affirmative;

(c) Whether the suit is within Law of Limitation - In the Negative;

(d) Whether the plaintiffs are entitled to possession of suit property - In the Negative;

(e) Whether plaintiffs are entitled to mesne profits? - Does not survive.

(f) Whether suit is maintainable? - In Negative.

(g) To what relief if any plaintiff is entitled? - In the negative.

(h) What order & Decree - As per final order below"

14. Thus, after holding that the possession of Dhondubai -- present defendants became adverse to the title of the real owner on and from the date of the appellate decree dated 27th June 1991 and, therefore, the suit would not be governed by Article 65 of the Limitation Act. It ultimately had to be dismissed. The same was, therefore, dismissed.

15. The lower appellate court on the basis of the oral and documentary evidence held that Dhondubai had taken a stand in Regular Civil Suit No.50 of 1977 that a property standing in the name of Chandrabai Jadhav situate at village Palshi be transferred in her name. The said chandrabai is sister of father of present respondents and that they are ready and willing to transfer the said property to Chandrabai.

They had already given undertaking in that behalf and, therefore, there was no lawful cause for the present appellant - defendants to refuse to hand over possession of the suit property to them. The lower appellate court also held that ever since the sale deed and from date of the original suit and appeal, the deceased Dhondubai and thereafter her legal representatives were and are in possession of the suit property. It is in this context that the plea of adverse possession was raised.

16. The lower appellate court having held that the suit on title is maintainable and respondents have proved their title to the suit property, could not have dismissed the suit of the present respondents. The discussion by the lower appellate court is in paras 13 and 14 of the lower appellate court's judgement. A reference is made to the earlier decrees. A reference is made to the fact that sale deed

dated 2nd May 1977 demonstrates that Dhondubai had parted with certain rights in exchange of properties agreed to be transferred in her favour. One Raosaheb and Murlidhar who were defendant in that suit were not parties to the agreement of exchange. However, they cannot avoid implication of the said agreement and, therefore, completion of part of such transaction of which plaintiff Dhondubai could not obtain fruits in entirety, gives her sufficient ground to claim protection available under sections 119 of the Transfer of Properties Act. The observations of the appellate court in the earlier judgement have been noted very clearly by the lower appellate court in the present judgement and, therefore, in the impugned judgement it has observed that the suit will have to be seen in the backdrop of Article 65. The suit claim would be governed thereby and not by Article 64. Article 65 applies to a suit for possession of immovable property or any interest

based therein on title as described under the said Article. The period of limitation is 12 years. When the possession of the defendant becomes adverse to the plaintiff is the time from which the period begins to run. The argument was that the suit would be governed by this Article. Article 64 would not be applicable. The lower appellate court held that when possession of the suit property even after the sale deed dated 2nd May 1977 is held to be not that of a trespasser but traceable to some right and when that finding became final, no question arises of such possession becoming adverse to the respondents - plaintiffs. This is a unfortunate case where despite the sale deed having been held to be legal and valid all through out, the respondents face deprivation of their legitimate and due rights thereunder. In fact, possession ought to follow on title being established and proved. However, unfortunately, in the earlier round of litigation that did not follow.

17. Be that as it may, there is no question of the Court entertaining a plea in these peculiar facts and circumstances, in the subsequent suit instituted by the respondents on title for possession, that the defendants thereto have become owners by adverse possession. The judgement of appellate court in the earlier proceedings ought to have been read in its entirety by the Trial Court in the present suit. It clearly holds that Dhondubai's possession is not hostile. She had right to retain possession only because of part adherence and regard to the deed of exchange. This was not a hostile possession as known to law. This is an attempt to defeat the rights of the respondents under the sale deed. In the light of the finding on title in the earlier litigation no plea of adverse possession could have been entertained. It is rightly turned down. The concept of adverse possession is explained repeatedly by the Supreme

Court. In (2006) 5 S.C.C. 570 (T.Anjanappa Vs. Somalingappa) the Court observes thus:-

"12. The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. A person is

said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property."

14. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tends to extinguish that person's title. Possession is not held to be adverse if it can be referred to a lawful title. The person setting up adverse possession may have been holding under the rightful owner's title e.g. trustees, guardians, bailiffs or agents. Such persons cannot set up adverse possession:-

"14. Adverse possession means a (hostile possession) which is expressly or impliedly in denial of title of the true owner. Under Article 65 (of the Limitation Act) burden is on the

defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed..."

"15. Where possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having

a lawful title, cannot divest another of that title by pretending that he had no title at all."

(See Annasaheb Bapusaheb Patil Vs. Balwant (1995) 2 S.C.C. 543 at page 554 paras 14-15).

15. An occupation of reality is inconsistent with the right of the true owner. Where a person possesses property in a manner in which he is not entitled to possess it, and without any thing to show that he possesses it otherwise than an owner (that is, with the intention of excluding all persons from it, including the rightful owner), he is in adverse possession of it. Thus, if A is in possession of a field of B's he is in adverse possession of it unless there is something to show that his possession is consistent with a recognition of B's title (See Ward Vs. Carttar (1865) LR 1 Eq.29). Adverse possession is of two

kinds according as it was adverse from the beginning, or has become so subsequently. Thus, if a mere trespasser takes possession of A's property, and retains it against him, his possession is adverse ab initio. But if A grants a lease of land to b, or B obtains possession of the land as A's bailiff, or guardian, or trustee, his possession can only become adverse by some change in his position. Adverse possession not only entitles the adverse possessor, like every other possessor, to be protected in his possession against all who cannot show a better title, but also, if the adverse possessor remains in possession for a certain period of time produces the effect either of barring the right of the true owner, and thus converting the possessor into the owner, or of depriving the true owner of his right of action to

recover his property and this although the true owner is ignorant of the adverse possessor being in occupation. (See *Rains Vs. Buxton* (1980) 14 Ch.D 537).

16. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of any person to whom the land rightfully belongs and tends to extinguish that person's title, which provides that no person shall make an entry or distress, or bring an action to recover any land or rent, but within twelve years next after the time when the right first accrued, and does away with the doctrine of adverse possession, except in the cases provided for by Section 15. Possession is not held to be adverse if it can be referred to a lawful title.

"20. It is well-recognised proposition in law that mere possession however long does not necessarily mean that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse

possessor actually informing the real owner of the former's hostile action."

18. Upon perusal of the earlier judgement and the relevant provisions of law, I am in agreement with the lower appellate court and the observations made more particularly in para 17 and 18 of its judgement. This is a case where it is not possible to agree with Mr.Mankapure that the suit claim would be governed by Article 64 of the Limitation Act. This is a case where the said Article would not be applicable. Ultimately, Article 64 and 65 of the Limitation Act provide for period of limitation in suits relating to immovable property. They fall in part V. Article 61 is speaking of a suit by a mortgagor to redeem or recover possession of immovable property mortgage, or to recover possession of immovable property mortgaged and afterwards transferred by the mortgagee for a valuable consideration or to recover surplus

collections received by the mortgagee after the mortgage has been satisfied. Article 62 is with relation to the suit to enforce payment of money secured by a mortgage or otherwise charged upon immovable property. Whereas, Article 63 provides for limitation of a suit by mortgagee for foreclosure and for possession of immovable property mortgaged. Then comes Article 64, which reads thus:-

For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.	Twelve years	The date of dis-possession.
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19. A bare perusal of Article 64 would suffice inasmuch as that provides for a period of 12 years as limitation to a suit for possession of immovable property based on previous

possession and not on title when the plaintiff, while in possession of the property stands dispossessed. When Dhondubai was all through out in possession and asserting her right on the basis of the Exchange Deed, then, the instant suit which was filed by the respondents to recover possession on the basis of their title when they were never in possession, can hardly be said to be governed by this Article. Article 65 provides for possession of immovable property or any interest therein based on title. The time begins to run when the possession of the defendants becomes adverse to the plaintiffs but explanation to this Article is also crucial. It reads thus:-

"Explanation:- For the purposes of this Article --

(a) Where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee the possession of the

defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession;

(b) Where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies;

(c) Where the suit is by a purchaser at a sale in execution of a decree when the judgement debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgement-debtor who was out of possession."

20. In the present case, the lower appellate court rightly held that to the nature of the claim made by the respondents plaintiffs, there is no limitation prescribed but when the party in possession of the property sets up a title adverse to the true owner, then, the period of twelve years would begin to run from the

possession of the defendant becoming adverse to the plaintiff. Therefore, if the possession is adverse to the true owner and such claim is set up and proved, the right in the property is extinguished but that having not been proved in the facts and circumstances of the present case, the suit is within limitation. It has been instituted within the period of 12 years, admittedly, from the judgement and decree dated 27th June 1991. Hence, the claim for adverse possession in the peculiar facts of this case not being found to be tenable and acceptable, the suit stands rightly decreed.

21. It is rather unfortunate that the sale deed dated 2nd May 1977 giving all right and title in the property to the present respondents, the fruits thereof could not be enjoyed on account of the litigation. It is further unfortunate that in the earlier round of litigation full and complete relief was denied to

the respondents by accepting the plea of Dhondubai that she was not a trespasser and although she has lost her right, title and interest in the immovable property, she can continue in possession thereof on the basis of part completion of the obligation under the deed of exchange. That led to second suit being filed and this time by Respondents plaintiffs. If the respondents plaintiffs were to be denied possession accepting plea of Dhondubai that she has become owner by adverse possession that would be a travesty of justice. Ultimately, law courts are there to render justice and not to defeat it. Justice cannot be a casualty on account of technical pleas being raised. The facts which have been noted in this case would sufficiently demonstrate that if the lower appellate court had confirmed the judgement and decree of the trial court, it would have been travesty of justice. It rightly stepped in as first appellate court and after full and complete appreciation and

appraisal of the facts and circumstances, has rendered the impugned judgement decreeing the suit of the respondents for possession on the basis of their proved previous title.

22. It is in these peculiar facts and circumstances that I see no reason to entertain this second appeal. Mr.Mankapure's reliance upon Article 64 so also the decision of the Supreme Court in the case of Shyam Sunder Prasad Vs. Raj Pal Singh reported in 1995 (1) S.C.C.311 is misplaced. Therein the pari materia Articles of the Old Limitation Act have been considered. The Supreme Court holds that Article 64 of the Limitation Act provides for period of limitation to a suit for possession of immovable property based on previous possession and not on title whereas Article 65 provides for possession of immovable property for possession or interest therein based on title. Under the old Limitation Act all suits for possession whether based on

title or on the ground of previous possession were governed by single Article 142. That has now been bifurcated. It is in these circumstances, that the issue was raised before the Supreme Court. The Supreme Court was concerned with a plea about applicability of Article 142 and on whom the burden of proof lies. In a suit on title for possession that burden would admittedly have to be discharged in the facts before the Supreme Court by the plaintiff. That burden could not shift on to the defendants because of the nature of the suit and the reliefs claimed therein. The Supreme Court decision, therefore, must be seen in that backdrop. Reliance thereafter, on the judgement, following this decision, reported in (2004) 7 S.C.C. 541 (Ramiah Vs. N.Narayana Reddy (Dead) by Lrs.) would also have to be viewed in that light.

23. Mr.Mankapure's alternate submission viz., that respondent No.2 has alienated one of the

lands which forms part of the deed of exchange after the decree of the lower appellate court and till the order of status quo was granted by this Court in the second appeal is equally devoid of any merits inasmuch as it has no relevance to the controversy in this second appeal. What the respondents have done with regard to the lands which are forming part of the deed of exchange cannot be a pointer or all such reliefs as would enable this Court to reverse the judgement and decree of the lower appellate court. Therefore, there is no merit in this submission either.

24. In the facts peculiar before me I am fully satisfied that the suit was governed by Article 65 and there was no question of entertaining the plea of Dhondubai's heirs regarding Adverse possession. That has been rightly negatived. More so, when she herself asserted in the earlier round of Litigation that she is not a trespasser but in possession of the

land pursuant to the Deed of Exchange. Therefore, no substantial question of law would arise for consideration of this Court. The Second Appeal is, therefore, devoid of any merits and deserves to be dismissed. The Civil Application would not survive in the light of dismissal of the second appeal and stands disposed of. However, there shall be no order as to costs.

25. At this stage Mr.Mankapure prays that the order passed by this Court, in Civil Application, granting ad-interim relief in terms of prayer clause (b) be continued to enable the appellants to challenge this order further. This request is opposed by the learned Counsel for respondents. However, considering that the ad-interim order was granted on 26th October 2005 and has been continued till date, the same shall continue for a period of four weeks from today. This order is passed after Mr.Mankapure states that the

appellants are in possession of the suit lands and that they would not alienate, encumber or part with possession thereof in any manner.

(S.C.DHARMADHIKARI, J)